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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 76.51)
of the Commission's Rules)
to Include Newton, New Jersey,)
and Riverhead, New York,)
in the New York, New York-)
Linden-Paterson-Newark,)
New Jersey, Television Market)

MM Docket No. 93-290

To: Chief, Mass Media Bureau

REPLY COMMENTS OF
CONTINENTAL CABLEVISION OF WESTERN NEW ENGLAND

Continental Cablevision of Western New England, Inc. (Continental"), by its attorneys, hereby submits these Reply Comments in opposition to the captioned Notice of Proposed Rule Making ("NPRM"), which proposes, at a minimum, to amend Section 76.51 of the Commission's rules and add the communities of Newton, New Jersey and Riverhead, New York to the New York, New York-Linden-Paterson-Newark, New Jersey hyphenated television market. Continental provides cable television service to approximately 57,000 subscribers located throughout Rockland and Westchester counties, in New York. Both counties are in the New York Area of Dominant Influence ("ADI"). Consequently,

Continental's system in Rockland/Westchester will be affected by the outcome of this proceeding.¹

Continental has reviewed the Commission's NPRM in this docket² as well as the petitions and comments filed by seven interested entities. Continental opposes any comprehensive or partial redesignation of the New York/New Jersey hyphenated television market as it currently exists, both as a matter of law and policy.

**I. None of the Four Commenting Stations Have Met
the Commission's Criteria for Market Hyphenation**

In addition to the two petitioning parties in this docket,³ two other commercial television stations responded to the Commission's unilateral proposal to add all television cities of license within the sprawling New York ADI to the New York/New Jersey television market.⁴ As all of the parties to this proceeding have recognized, the Commission has

¹Continental also notes that it has filed one of the "various" Petitions for Special Relief relating to modification of the New York ADI, referred to by the Commission in the subject NPRM. See NPRM in MM Docket 93-290, DA 93-1349 (released November 16, 1993) at fn. 2. Continental disputes the Commission's contention that resolution of this proceeding can be achieved without prejudice to Continental's pending market modification petition, as inconsistent rulings between the proceedings could produce substantial disruption to Continental's customers.

²NPRM in MM Docket 93-290, DA 93-1349, (released November 16, 1993).

³Mountain Broadcasting Corporation, licensee of WMBC-TV, Newton, New Jersey and WLIG-TV, Inc., licensee of WLIG(TV), Riverhead, New York.

⁴See Comments of WTZA-TV Associates Limited Partnership, licensee of WTZA(TV), Kingston, New York ("WTZA") and Bridgeways Communications Corp., licensee of WHAI-TV, Bridgeport, Connecticut (WHAI). Inasmuch as the licensees of the commercial television stations licensed to Secaucus, Poughkeepsie and Smithtown did not provide the Commission with certain of the information necessary to make a market redesignation determination, the Commission's proposal with regard to these three stations should be rejected.

established the following four factors as relevant to the review of market-hyphenation requests: (1) the distance between the existing designated communities and the community(ies) proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.⁵ None of the four subject stations has made a compelling showing, based on these factors, that entitles them to the rather dramatic relief of the proposed market redesignation.

For example, WMBC is located approximately 45 miles from New York City, obviously the center of the New York television market. WLIG is located over 70 miles from New York City, Bridgeport approximately 54 miles, and Kingston is over 90 miles. None of these stations reasonably can be said to be "adjacent" to the hub of the New York/New Jersey television market. More telling to the market proximity consideration is the fact that, if all four stations are added to a redesignated New York market, a massive market would be created with enormous must-carry and copyright implications. To illustrate, Kingston, New York is located approximately 102 miles from Riverhead. Further, Riverhead, New York is located approximately 110 miles from Newton, New Jersey. Considering the fact that an additional 35 mile zone would be added to each of these communities for cable copyright liability determinations, these distances become even greater. In addition, the 35 mile zones surrounding these additional communities would reach into the designated zones of at least two other hyphenated markets.

⁵See *NPRM*, at para. 3.

The stations' arguments regarding the second factor are universally disingenuous. The second factor quite plainly examines whether cable carriage of the stations would extend the stations' reach to areas outside of their respective Grade B coverage areas. As demonstrated in the attached Exhibit 1, redesignation of the New York market in any of the proposed formats would entitle the stations to cable carriage by systems that are not even remotely proximate to the stations' Grade B contours. For example, WHAI's coverage map shows that it does not place a Grade B contour over the western half of Long Island (closest to New York City), none of New York City's five boroughs, and no portion of northern New Jersey. However, if the New York market is redesignated to include all New York ADI television communities, WHAI would reach all of these areas, and significantly more. Similarly, WLIG does not place a Grade B contour over the vast majority of New York City, and no part of New Jersey. While WMBC's contour does cover portions of the currently designated market, its access to viewers upon market redesignation certainly will increase exponentially. The most dramatic example of an extended coverage area would occur in the case of WTZA, which presently does not place a Grade B contour over **any** of the communities in the New York/New Jersey television market. Certainly, for each of these stations, the extension of rights accorded by the redesignation would occur for areas **largely outside** of each of the stations' respective contours.⁶

Finally, strong showings regarding the last two factors are also lacking. Presumably, all commercial television stations, particularly UHF stations, could assert a particular financial

⁶See Major Television Markets (Melbourne, Florida), 57 RR2d 685, 692 (1985).

need to increase the area in which they would not incur financial liability under the copyright compulsory license. However, this universal goal should not be the sole showing required by the Commission to justify such a large scale market redesignation, which will have tremendous implications both for the cable industry and for the recipients of copyright royalty payments. In addition, contrary to the arguments of the stations, Continental already offers its customers a vast array of programming, which will be largely duplicated by the addition of the subject stations.⁷ Accordingly, since none of the commenting stations have been able to demonstrate meaningful compliance with the four enumerated factors, or that any of the stations actually compete with existing New York/New Jersey market stations, the market redesignation proposals must be rejected as a matter of law.

II. Relevant Policy Considerations Also Militate Against the Proposed Market Redesignation

A. Other Options Are Available to the Stations

The Commission correctly recognizes that less drastic means are available to stations such as WLIG and WMBC to accomplish their specific goals of eliminating copyright liability.⁸ The most appropriate, and equitable, method for the stations to employ to achieve their goal of being treated as "local" for copyright purposes, is to establish "significantly

⁷Furthermore, as Continental noted in its Petition for Special Relief to modify the New York ADI, Continental already has had to drop some cable programming services, and split the hours of others, since the reimposition of the must-carry rules during the spring of 1993. Continental must reserve up to 55% of its channel capacity to fully comply with its must-carry, leased access and franchise-imposed PEG obligations. The additional loss of requested cable programming channels would in no way serve the "public interest" of Continental's customers.

⁸See NPRM at para. 14.

viewed" status throughout the market. Not only will this procedure allow the stations to attain the relief they are seeking, but it also more accurately would require carriage based on actual viewing patterns. Since a less disruptive approach is available to allay the stations' financial concerns, it should be adopted.

B. Market Redesignation Could Subject Cable Operators to Future Copyright Liability

As noted by several commenters in this proceeding, the United States Copyright Office issued a Notice of Inquiry in June 1993 to examine whether it should adhere to the Commission's recent and potential changes to the major television market list of Section 76.51.⁹ In the NOI, the Copyright Office made clear that it does not nor would not consider itself bound by future FCC market redesignations for copyright liability purposes. This being the case, any Commission market redesignation could leave a cable operator in the position of being **forced** to either assume tremendous additional copyright liability without indemnification from the causal station, or, to refuse to carry the station and subject itself to probable FCC sanctions and/or a forfeiture. Obviously, some sort of resolution of this dilemma is required before the Commission embarks on large-scale market redesignations.

III. Conclusion


The proposed redesignation of the New York/New Jersey television market to be co-terminous with the New York ADI is both unwarranted and illogical. Competitive commonality does not exist in any meaningful way between the existing market stations and

⁹See Notice of Inquiry in Docket No. RM 93-5, 58 Fed. Reg. 34594 (released June 28, 1993).

television stations on the outskirts of the New York ADI. Furthermore, the stations have not been able to define a particularized need for the redesignation, other than the need to reduce their copyright liability, or possibly to assert program exclusivity rights. Since less dramatic means exist to accomplish both of these goals, redesignation of the market is unwarranted.

Respectfully submitted,

**CONTINENTAL CABLEVISION OF
WESTERN NEW ENGLAND, INC.**

By: 
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January 18, 1993

EXHIBIT 1

Station Coverage Maps

Connecticut—Bridgeport

WHAI-TV

Ch. 43

Network Service: None, independent.

Licensee: Bridgeways Communications Corp., 274 Riverside Ave., Westport, CT 06880.

Studio: 80 Great Hill Rd., Seymour, CT 06483.

Telephone: 203-227-8932. **Fax:** 203-227-0537.

Technical Facilities: Channel No. 43 (644-650 MHz). Authorized power: 2298-kw max. & 1784-kw horizontal visual, 229.8-kw max. & 178.4-kw horizontal aural. Antenna: 510-ft. above av. terrain, 297-ft. above ground, 917-ft. above sea level.

Latitude	41°	21'	43"
Longitude	73°	06'	48"

Transmitter: 80 Great Hill Rd., Seymour.

Ownership: Bridgeways Communications Corp.

Began Operation: September 28, 1987.

Represented (legal): Crowell & Moring; Pepe & Hazard (Hartford, CT).

Represented (engineering): Moffet, Larson & Johnson Inc.

Personnel:

Michael Vlock, General Manager.

Harlan Neusebarn, Director of Operations.

Stewart Jaeser, Chief Engineer.

Rates: On request.

Arbitron Data: Not available.



WHAI-TV BMPCT-821207KF Granted 1/28/83 © American Map Corp., No. 14244

City of License: Bridgeport. ADI: New York. Rank: 1.

New York—Riverhead

WLIG

Ch. 55

Network Service: None, independent.

Licensee: Trexar Corp., 270 S. Service Rd., Box 1355, Melville, NY 11747.

Studio: 315 Wading River Hollow Rd., Ridge, NY 11961.

Mailing Address: Box 1355, 270 S. Service Rd., Melville, NY 11747.

Telephones: 516-777-8855; 516-924-5000. **Fax:** 516-777-8180.

Technical Facilities: Channel No. 55 (716-722 MHz). Authorized power: 5000-kw max. & 474-kw horizontal visual, 500-kw max. & 47.4-kw horizontal aural. Antenna: 700-ft. above av. terrain, 637-ft. above ground, 731-ft. above sea level.

Latitude 40° 53' 50"
Longitude 72° 54' 56"

Transmitter: 315 Wading River Hollow Rd., Ridge.

Satellite Earth Stations: Vertex, 4.8-meter C-band; RCA Ku-band.

Ownership: Trexar Corp.

Began Operation: April 28, 1985.

Represented (legal): Fletcher, Heald & Hildreth.

Personnel:

Marvin R. Chauvin, Vice President & General Manager.

Patrick Rush, Local Sales Manager.

Mindy Feinstein, Regional Sales Manager.

Lucille Schriefer, News Director.

Ron Scotto, Chief Engineer.

Maria Schwab, Promotion Director.

Jim Weis, Business Manager.

John Henderson, Marketing Director.

Gerard Diorio, Production Manager.

Highest 30 Sec. Rate: \$550.

City of License: Riverhead. **ADI:** New York. **Rank:** 1.

Total Households: ©MSI Consumer Market Data as of 1/1/92. TV Homes, TV% and Circulation ©1992 Arbitron. County coverage based on Arbitron study.



Net Weekly Circulation	State County	Total Households	TV Households	%
Between 5-24%	NEW YORK Queens	743,100	736,400	99
	Suffolk	432,700	428,900	99
Station Totals		1,175,800	1,165,300	99
Net Weekly Circulation (1992)			168,800	
Average Daily Circulation (1992)			42,600	

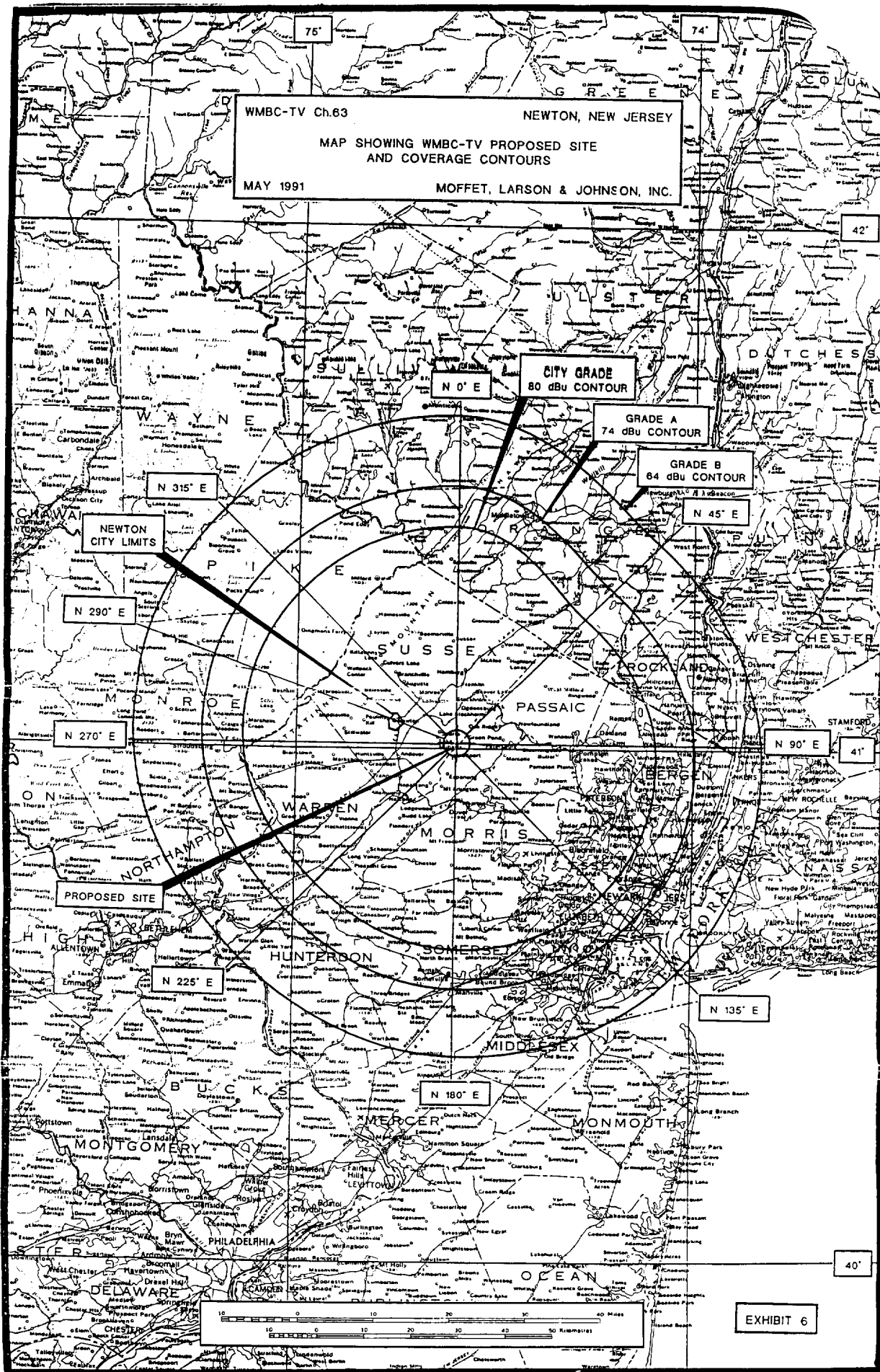


EXHIBIT 6

New York—Kingston

WTZA

Ch. 62

Network Service: None, independent.

Licensee: WTZA-TV Assoc., Box 1609, Kingston, NY 12401.

Studios: 721 Broadway, Kingston, NY 12401; Bldg. 800, 1010 Breunig Rd., New Windsor, NY 12553.

Telephone: 914-339-6200. **Fax:** 914-339-6264; 914-339-6210.

Technical Facilities: Channel No. 62 (758-764 MHz). Authorized power: 5000-kw max. visual, 500-kw max. aural. Antenna: 1962-ft. above av. terrain, 299-ft. above ground, 3219-ft. above sea level.

Latitude 42° 05' 06"
Longitude 74° 06' 00"

Transmitter: Overlook Mountain, Woodstock.

Satellite Earth Stations: Harris, 6.1-meter; M/A-Com Ku-band; Harris, M/A-Com receivers.

News Services: AP, CNN, NYT.

Ownership: WTZA-TV Associates.

Began Operation: December 15, 1985.

Represented (legal): Wiley, Rein & Fielding.

Represented (engineering): Jules Cohen & Associates, P.C.

Personnel:

Edward P. Swyer, Managing Partner & Chief Executive Officer.
David Earle, Vice President & General Manager.
Art DePasqua, Sales Director.
Kevin Dunn, National Sales Manager.
Jan Chomiak, Eastern Sales Manager.
Henry Marcotte, News Director.
Steve Houk, Promotion Director.
Kathy Yanas, Director of Community Relations.
Leslie Dawson, Business Manager.
Michael Shovan, Chief Engineer.

Rates: On request.

City of License: Kingston. **ADI:** New York. **Rank:** 1.

Total Households: ©MSI Consumer Market Data as of 1/1/92. TV Homes, TV% and Circulation ©1992 Arbitron. County coverage based on Arbitron study.



Net Weekly Circulation	State County	Total Households	TV Households	%
Between 25-49%	NEW YORK			
	Columbia	24,000	23,600	98
	Dutchess	92,200	90,600	98
	Greene	17,100	16,800	98
	Putnam	29,100	28,700	99
	Ulster	62,800	61,300	98
Between 5-24%	NEW YORK			
	Orange	102,900	101,200	98
	Rensselaer	56,700	55,800	98
Station Totals		384,800	378,000	98
Net Weekly Circulation (1992)				126,300
Average Daily Circulation (1992)				45,500

CERTIFICATE OF SERVICE

I, Theresa A. Zeterberg, do hereby certify that a copy of the foregoing "Reply Comments of Continental Cablevision of Western New England" was served on the following by either hand delivery or first class mail, postage prepaid, this 18th day of January 1994.

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